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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	:	Before the Examiner:
Alexander, Jr. et al.	:	Philpott, Justin M.
Serial No.: 09/513,518	:	Group Art Unit: 2665
Filed: February 25, 2000	:	
	:	IBM Corporation
Title: PORTABLE NETWORKING	:	IP Law Dept. YXSA/Bldg. 002
INTERFACE METHOD AND	:	3039 Cornwallis Road
APPARATUS FOR DISTRIBUTED	:	P.O. Box 12195
SWITCHING SYSTEM	:	Research Triangle Park, NC 27709

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Notification of Non-Compliant Appeal Brief having a mailing date of August 23, 2006, with a time for response set to expire on September 23, 2006, Appellants respond as follows:

The Examiner indicated that the Supplemental Appeal Brief, filed on September 24, 2004, incorporating various sections of Appellants' Appeal Brief, filed on May 17, 2004, does not include a summary of claimed subject matter section citing 37 C.F.R. §41.37(c). Appellants respectfully point out to the Examiner that these Appeal Briefs were filed prior to the rule changes and there was no requirement of having a "summary of claimed subject matter" section. Instead, it was referred to as a "summary of invention" section which is included in Appellants' Appeal Brief, filed on May 17, 2004. Further, the Examiner asserts that the Supplemental Appeal Brief does not include a claims appendix. The claims appendix, which was provided in Appellants' Appeal Brief, filed on May 17, 2004, was incorporated by reference in the Supplemental Appeal Brief. Nonetheless, Appellants have amended the Supplemental Appeal Brief and the Appeal Brief filed on May 17, 2004 (referred to as the "Amended Appeal Brief") to be commensurate with the new rule changes (effective date of September 13, 2004). As a result, Appellants respectfully assert that the Amended Appeal Brief, filed separately, is in compliance and respectfully request the Examiner to withdraw the notice of non-compliance.

Respectfully submitted,

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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AMENDED APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I. REAL PARTY IN INTEREST

The real party in interest is International Business Machines, Inc., which is the assignee of the entire right, title and interest in the above-identified patent application.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, Appellants' legal representative or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 35-68 are pending in the Application. Claims 1-34 were cancelled. Claims 35-68 stand rejected. Claims 35-68 are appealed.

IV. STATUS OF AMENDMENTS

Appellants have not submitted any amendments following receipt of the final rejection with a mailing date of February 12, 2004.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 35:

In one embodiment of the present invention, a network switch comprises a CPU. Specification, page 5, line 16 – page 6, line 23; Figure 1, elements 100, 114. The network switch may further comprise a memory system having circuitry operable to attach to the CPU. Specification, page 5, line 16 – page 6, line 23. The network switch may further comprise a switch fabric system having circuitry operable to attach to the CPU. Specification, page 5, line 16 – page 6, line 23; Figure 1, elements 112, 114. The network switch may further comprise a port controller having circuitry operable to attach to the switch fabric system. Specification, page 5, line 16 – page 6, line 23; Figure 1, elements 110, 112. The network switch may further comprise a software application operable to execute on the CPU. Specification, page 5, line 16 – page 6, line 23. The network switch may further comprise a Forwarding Database Distribution Library (FDDL) system operable to execute on the CPU. Specification, page 7, lines 1-18; Figure 3, element 310. The network switch may further comprise a switch device driver operable to execute on the CPU, where the software application is operable to communicate with the FDDL system, the FDDL system is operable to communicate with the switch device driver, and the switch device driver is operable to communicate with the switch fabric. Specification, page 5, line 16 - page 8, line 9; Figure 1, element 112; Figure 3, elements 310, 312; Figure 4, element 420.

Independent Claim 43:

In one embodiment of the present invention, a network switch comprises a

CPU. Specification, page 5, line 16 – page 6, line 23; Figure 1, elements 100, 114. The network switch may further comprise a memory system having circuitry operable to attach to the CPU. Specification, page 5, line 16 – page 6, line 23. The network switch may further comprise a switch fabric system having circuitry operable to attach to the CPU. Specification, page 5, line 16 – page 6, line 23; Figure 1, elements 112, 114. The network switch may further comprise a port controller having circuitry operable to attach to the switch fabric system. Specification, page 5, line 16 – page 6, line 23; Figure 1, elements 110, 112. The network switch may further comprise a protocol means for providing a service to a network system. Specification, page 5, line 16 – page 7, line 18; Figure 3, elements 314, 316, 318, 320. The network switch may further comprise a Forwarding Database Distribution Library (FDDL) means for communicating with the protocol means. Specification, page 7, lines 1-18; Figure 3, element 310. The network switch may further comprise a switch device driver means for communicating with the FDDL means and the port controller. Specification, page 5, line 16 - page 8, line 9; Figure 1, element 110; Figure 3, element 310; Figure 4, element 420.

Dependent Claim 44:

In one embodiment of the present invention, the network switch of claim 43 further comprises a second protocol means for providing a second service to the network system, where the FDDL means communicates with the second protocol means. Specification, page 7, lines 1-18; Figure 3, elements 314, 316, 318, 320.

Dependent Claim 45:

In one embodiment of the present invention, the network switch of claim 43, where the FDDL means defines an FDDL API for communication with the software application, and the FDDL means defines a Switch Services API for communication with the switch device driver. Specification, page 7, lines 1-18; Figure 3, elements 310, 334.

Dependent Claim 46:

In one embodiment of the present invention, the network switch of claim 44, where the FDDL means defines an FDDL API for communication with the protocol means and the second protocol means, and the FDDL system defines a Switch Services API for communication with the switch device driver means. Specification, page 7, lines 1-18; Figure 3, elements 310, 334.

Dependent Claim 47:

In one embodiment of the present invention, the network switch of claim 44, where the FDDL means comprises: a base FDDL means for communicating with the switch device driver means; a protocol tower FDDL means for communicating with the protocol means and the base FDDL means; and a second protocol tower FDDL means for communicating with a second protocol means and the base FDDL means. Specification, page 7, lines 1-18; Figure 3, elements 322, 324, 326, 328 and 330.

Dependent Claim 48:

In one embodiment of the present invention, the network switch of claim 43 further comprises an independent protocol means for providing an independent service to the network system; and an independent protocol shim for communicating with the independent protocol means and the switch device driver means. Specification, page 7, line 1 – page 8, line 9; Figure 3, elements 314, 316, 318, 320; Figure 4, elements 414, 416.

Dependent Claim 49:

In one embodiment of the present invention, the network switch of claim 48 further comprises second protocol means for providing a second service to the network system, where the FDDL means communicates with the second protocol means. Specification, page 7, line 1 – page 8, line 9; Figure 3, elements 314, 316,

318, 320.

Dependent Claim 50:

In one embodiment of the present invention, the network switch of claim 48, where the FDDL means comprises: a base FDDL means for communicating with the switch device driver means; a protocol tower FDDL means for communicating with the protocol means and the base FDDL means; and a second protocol tower FDDL means for communicating with the second protocol means and the base FDDL means. Specification, page 7, lines 1-18; Figure 3, elements 322, 324, 326, 328 and 330.

Independent Claim 51:

In one embodiment of the present invention, a method of providing communications over a network system utilizing a first protocol and a second protocol, the method comprises the step of receiving information at a port controller in a first protocol from a first node machine. Specification, page 5, line 16 – page 6, line 23; Figure 1, elements 102, 110. The method may further comprise communicating the information from the port controller to a switch fabric. Specification, page 5, line 16 – page 6, line 23; Figure 1, elements 110, 112. The method may further comprise communicating the information from the switch fabric to a switch device driver within an operating system. Specification, page 5, line 16 – page 7, line 18; Figure 1, element 112; Figure 3, element 312. The method may further comprise communicating the information from the switch device driver to a Forwarding Database Distribution Library (FDDL). Specification, page 5, line 16 – page 7, line 18; Figure 3, elements 310, 312. The method may further comprise communicating the information from the FDDL to a first protocol client. Specification, page 5, line 16 – page 7, line 18; Figure 3, elements 310, 314, 316, 318, 320.

Independent Claim 56:

In one embodiment of the present invention, a computer-readable medium having stored thereon computer-executable instructions for performing the steps comprises receiving information at a port controller in a first protocol from a first node machine. Specification, page 5, line 16 – page 6, line 23; Figure 1, elements 102, 110. The computer-executable instructions further comprises communicating the information from the port controller to a switch fabric. Specification, page 5, line 16 – page 6, line 23; Figure 1, elements 110, 112. The computer-executable instructions further comprises communicating the information from the switch fabric to a switch device driver within an operating system. Specification, page 5, line 16 – page 7, line 18; Figure 1, element 112; Figure 3, element 312. The computer-executable instructions further comprises communicating the information from the switch device driver to a Forwarding Database Distribution Library (FDDL). Specification, page 5, line 16 – page 7, line 18; Figure 3, elements 310, 312. The computer-executable instructions further comprises communicating the information from the FDDL to a first protocol client. Specification, page 5, line 16 – page 7, line 18; Figure 3, elements 310, 314, 316, 318, 320.

Independent Claim 61:

In one embodiment of the present invention, a network system comprises a network switch comprising a CPU. Specification, page 5, line 16 – page 6, line 23; Figure 1, elements 108, 114. The network system further comprises a memory system having circuitry operable to attach to the CPU. Specification, page 5, line 16 – page 6, line 23; Figure 1, elements 108, 114. The network system further comprises a switch fabric system having circuitry operable to attach to the CPU. Specification, page 5, line 16 – page 6, line 23; Figure 1, elements 112, 114. The network system further comprises a port controller having circuitry operable to attach to the switch fabric system. Specification, page 5, line 16 – page 6, line 23; Figure 1, elements 110, 112. The network system further comprises a software application operable to

execute on the CPU. Specification, page 5, line 16 – page 6, line 23. The network system further comprises a Forwarding Database Distribution Library (FDDL) system operable to execute on the CPU. Specification, page 7, lines 1-18; Figure 3, element 310. The network system further comprises a switch device driver operable to execute on the CPU, where the software application is operable to communicate with the FDDL system, the FDDL system is operable to communicate with the switch device driver, and the switch device driver is operable to communicate with the switch fabric. Specification, page 5, line 16 - page 8, line 9; Figure 1, element 112; Figure 3, elements 310, 312; Figure 4, element 420. The network system further comprises a backbone. Specification, page 5, line 16 – page 6, line 23; Figure 1, element 104. The network system further comprises a workstation, where the workstation is logically connected to the backbone, where the backbone is logically connected to the port controller of the network switch. Specification, page 5, line 16 – page 6, line 23; Figure 1, elements 100, 102, 104, 110.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 35-38, 43-46, 51-54, 56-59 and 61-64 stand rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann et al. (U.S. Patent No. 6,516,355) (hereinafter "Hartmann").

B. Claims 39-42, 47-50, 55, 60 and 65-68 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hartmann.

VII. ARGUMENT

A. Claims 35-38, 43-46, 51-54, 56-59 and 61-64 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

The Examiner has rejected claims 35-38, 43-46, 51-54, 56-59 and 61-64 under 35 U.S.C. §102(e) as being anticipated by Hartmann. Paper No. 12, page 2.

Appellants respectfully traverse for at least the reasons stated below and respectfully request the Examiner to reconsider and withdraw these rejections.

For a claim to be anticipated under 35 U.S.C. §102, each and every claim limitation must be found within the cited prior art reference and arranged as required by the claim. M.P.E.P. §2131.

1. Claims 35, 43 and 61 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "a network switch comprising a CPU" as recited in claim 35 and similarly in claims 43 and 61. The Examiner cites element 100 in Figure 4 of Hartmann as disclosing a CPU. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 100 is a switching engine. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a switching engine is equivalent to a CPU within a network switch. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that must make clear that a switching engine is equivalent to a CPU within a network switch, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 35, 43 and 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a network switch comprising a memory system having circuitry operable to attach to the CPU" as recited in claim 35 and similarly in claims 43 and 61. The Examiner cites element 108 in Figure 4 of Hartmann as disclosing a memory system attached to element 100. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 108 are data files. Column 5, line 60. These data files do not appear to be stored within a network switch. The Examiner has not provided

any basis in fact and/or technical reasoning to support the assertion that data files (element 108) are equivalent to a memory system within a network switch. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that must make clear that data files (element 108) are equivalent to a memory system within a network switch, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 35, 43 and 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a switch fabric system having circuitry operable to attach to the CPU" as recited in claim 35 and similarly in claims 43 and 61. The Examiner cites element 102 of Hartmann as disclosing a switch fabric system attached to element 100. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 102 is a switch which communicates with switching engine 100. Column 5, lines 2-3. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that switch 102 and switching engine 100 are equivalent to a switch fabric system within a network switch that has circuitry operable to attach to a CPU. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that switch 102 and switching engine 100 are equivalent to a switch fabric system within a network switch that has circuitry operable to attach to a CPU, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 35, 43 and 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a port controller having circuitry operable to attach to the switch fabric system" as recited in claim 35

and similarly in claims 43 and 61. The Examiner cites either element 118 or element 128 of Hartmann as being a port controller and element 102 of Hartmann as being a switch fabric system. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 118 provides the logic necessary to communicate with the switching matrix. Column 5, lines 35-36. Hartmann further discloses that element 128 provides the logic necessary to manage transactions with switch 102 over an OA&M interface. Column 5, lines 57-59. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that providing the logic necessary to communicate with a switching matrix or that providing the logic necessary to manage transactions with a switch over an OA&M interface is equivalent to a port controller. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that providing the logic necessary to communicate with a switching matrix or that providing the logic necessary to manage transactions with a switch over an OA&M interface is equivalent to a port controller, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 35, 43 and 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a software application operable to execute on the CPU" as recited in claim 35 and similarly in claims 43 and 61. The Examiner cites either elements 110, 112 and 114 of Hartmann as being a software application operable to execute on a CPU. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 110 is a connection API translator as well as discloses that element 112 is a Media API translator and that element 114 is an in-band signaling API translator. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that either a connection API translator, a Media API translator or an in-band signaling API translator is a software application. *Ex parte Levy*, 17 U.S.P.Q.2d 1461,

1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that either a connection API translator, a Media API translator or an in-band signaling API translator is a software application, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 35, 43 and 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a Forwarding Database Distribution Library (FDDL) system operable to execute on the CPU" as recited in claim 35 and similarly in claims 43 and 61. The Examiner cites element 124 of Hartmann as being an FDDL system. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 124 is an object server interface translator which provides the logic necessary to convert object server API messages from the MMI into native switch operation, administration, and maintenance messages into object server API messages. Column 5, lines 46-50. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator, as described above, is an FDDL system. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator, as described above, is an FDDL system, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 35, 43 and 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a switch device driver operable to execute on the CPU" as recited in claim 35 and similarly in claims 43 and 61. The Examiner cites either element 116 or 126 of Hartmann as a switch device driver. Paper No. 12, page 3. Appellants respectfully traverse and assert that

Hartmann instead discloses that element 116 is a call control transaction manager. Column 5, line 26. Hartmann further discloses that element 126 is a native switch OA&M transaction manager. Column 5, line 56. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a call control transaction manager or a native switch OA&M transaction manager is a switch device driver operable to execute on a CPU. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a call control transaction manager or a native switch OA&M transaction manager is a switch device driver operable to execute on a CPU, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 35, 43 and 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "wherein the software application is operable to communicate with the FDDL system, the FDDL system is operable to communicate with the switch device driver, and the switch device driver is operable to communicate with the switch fabric" as recited in claim 35 and similarly in claims 43 and 61. The Examiner cites either element 110, 112 or 114 of Hartmann as disclosing a software application; element 124 of Hartmann as disclosing an FDDL system; element 116 or 126 of Hartmann as disclosing a switch device driver and element 102 of Hartmann as disclosing a switch fabric. Paper No. 12, page 3. Appellants respectfully traverse for at least the above-stated reasons. Accordingly, Hartmann does not disclose all of the limitations of claims 35, 43 and 61, and thus Hartmann does not anticipate claims 35, 43 and 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a protocol means for providing a service to a network system" as recited in claim 43. The Examiner cites either elements 110, 112 or 114 of Hartmann as disclosing the above-cited claim limitation. Paper No. 12, page 4. Appellants respectfully traverse and assert that

Hartmann instead discloses that element 110 is a connection API translator as well as that element 112 is a Media API translator and that element 114 is an in-band signaling API translator. Column 5, lines 15-27. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that either a connection API translator, a Media API translator or an in-band signaling API translator has protocol means for providing a service to a network system. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that either a connection API translator, a Media API translator or an in-band signaling API translator has protocol means for providing a service to a network system, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claim 43. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a backbone" as recited in claim 61. The Examiner states that a coupling between elements 106 and 100 in Figure 4 of Hartmann discloses a backbone within a network system. Paper No. 12, page 4. Appellants respectfully traverse and assert that Hartmann instead discloses that element 106 corresponds to a man-machine interface and that element 100 corresponds to a switching engine. Figure 4 of Hartmann. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that the interconnection between a man-machine interface and a switching engine discloses a backbone within a network system. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that the interconnection between a man-machine interface and a switching engine discloses a backbone within a network system, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claim 61. M.P.E.P. §2131.

Appellants further that Hartmann does not disclose "a workstation" as recited in claim 61. The Examiner cites element 106 of Hartmann as disclosing a workstation within a network system. Paper No. 12, page 4. Appellants respectfully traverse and assert that Hartmann instead discloses that element 106 is a man-machine interface of a development system. Column 5, line 5. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a man-machine interface of a development system is a workstation within a network system. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a man-machine interface of a development system is a workstation within a network system, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claim 61. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "wherein the workstation is logically connected to the backbone, and wherein the backbone is logically connected to the port controller of the network switch" as recited in claim 61. The Examiner cites element 106 of Hartmann as a workstation; the coupling between elements 106 and 100 of Hartmann as a backbone and either element 118 or 128 of Hartmann as a port controller. Paper No. 12, page 4. Appellants respectfully traverse for at least the above-stated reasons. Thus, Hartmann does not disclose all of the limitations of claim 61, and thus Hartmann does not anticipate claim 61. M.P.E.P. §2131.

2. Claims 51 and 56 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "receiving information at a port controller in a first protocol from a first node machine" as recited in claim 51 and similarly in claim 56. The Examiner cites element 128 of

Hartmann as disclosing a port controller as well as column 3, line 45-column 4, line 65 and column 5, lines 11-40 of Hartmann as disclosing a first protocol and element 106 of Hartmann as disclosing a first node machine. Paper No. 12, page 4. Appellants respectfully traverse.

Hartmann instead discloses that element 128 corresponds to a switch operation, administration and maintenance (OA&M). The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a switch operation, administration and maintenance corresponds to a port controller. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a switch operation, administration and maintenance corresponds to a port controller, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 51 and 56. M.P.E.P. §2131.

Further, there is no language in the cited passage in Hartmann that discloses that the switch OA&M receives information in a protocol. Thus, Hartmann does not disclose all of the limitations of claims 51 and 56, and thus Hartmann does not anticipate claims 51 and 56. M.P.E.P. §2131.

Further, Hartmann instead discloses that element 106 is a man-machine interface. Column 5, lines 5. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a man-machine interface corresponds to a node where a port controller received information from that node. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a man-machine interface corresponds to a node where a port controller received information from that node, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949,

1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 51 and 56. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "communicating the information from the port controller to a switch fabric" as recited in claim 51 and similarly in claim 56. The Examiner cites element 128 of Hartmann as disclosing a port controller and element 102 of Hartmann as disclosing a switch fabric. Paper No. 12, page 4. Appellants respectfully traverse.

Hartmann instead discloses that element 128 is a switch OA&M. Column 5, line 57. Hartmann further discloses that element 102 is a switch. Column 5, line 3. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a switch OA&M corresponds to a port controller that communicates with element 102 that corresponds to a switch fabric. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a switch OA&M corresponds to a port controller that communicates with element 102 that corresponds to a switch fabric, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 51 and 56. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "communicating the information from the switch fabric to a switch device driver within an operating system" as recited in claim 51 and similarly in claim 56. The Examiner cites element 102 of Hartmann as disclosing a switch fabric and element 126 of Hartmann as disclosing a switch device driver. Paper No. 12, page 4. Appellants respectfully traverse.

Hartmann instead discloses that element 102 is a switch. Column 5, line 3. Hartmann further discloses that element 126 is a native switch OA&M transaction manager. Column 5, line 56. Hartmann does not disclose that information from the switch is communicated to the native switch OA&M transaction manager within an operating system. Thus, Hartmann does not disclose all of the limitations of claims 51 and 56, and thus Hartmann does not anticipate claims 51 and 56. M.P.E.P. §2131.

Furthermore, the Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a switch (element 102 of Hartmann) corresponds to a switch fabric, where information from the switch is communicated to a native switch OA&M transaction manager, which corresponds to a switch device driver, within an operating system. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a switch (element 102 of Hartmann) corresponds to a switch fabric, where information from the switch is communicated to a native switch OA&M transaction manager, which corresponds to a switch device driver, within an operating system, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 51 and 56. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "communicating the information from the switch device driver to a Forwarding Database Distribution Library (FDDL)" as recited in claim 51 and similarly in claim 56. The Examiner cites element 126 of Hartmann as disclosing a switch device driver and element 124 of Hartmann as disclosing a FDDL. Paper No. 12, page 4. Appellants respectfully traverse.

Hartmann instead discloses that element 126 corresponds to a native switch OA&M. Column 5, line 56. Hartmann further discloses that element 124 corresponds to an object server interface translator. Column 5, line 63.

The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a native switch OA&M corresponds to a switch device driver. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a native switch OA&M corresponds to a switch device driver, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 51 and 56. M.P.E.P. §2131.

Further, the Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator corresponds to an FDDL. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator corresponds to an FDDL, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 51 and 56. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "communicating the information from the FDDL to a first protocol client" as recited in claim 51 and similarly in claim 56. The Examiner cites element 124 of Hartmann as disclosing an FDDL and element 106 of Hartmann as disclosing a first protocol client. Paper No. 12, page 4. Appellants respectfully traverse.

Hartmann instead discloses that element 124 corresponds to an object server interface translator. Column 5, line 63. Hartmann further discloses that element 106 corresponds to a man-machine interface. Column 5, line 5.

The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator corresponds to an FDDL. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator corresponds to an FDDL, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 51 and 56. M.P.E.P. §2131.

Further, the Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a man-machine interface is a first protocol client. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a man-machine interface is a first protocol client, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 51 and 56. M.P.E.P. §2131.

3. Claims 36 and 62 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "a second software application operable to execute on the CPU, wherein the second software application communicates with the FDDL system" as recited in claim 36 and similarly in claim 62. The Examiner cites either element 110, 112 or 114 of Hartmann as disclosing the above-cited claim limitation. Paper No. 12, page 4. Appellants respectfully traverse and assert that Hartmann instead discloses that

element 110 is a connection API translator as well as that element 112 is a Media API translator and that element 114 is an in-band signaling API translator. Column 5, lines 15-20. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that either a connection API translator, a Media API translator or an in-band signaling API translator is a software application. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that either a connection API translator, a Media API translator or an in-band signaling API translator is a software application, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 36 and 62. M.P.E.P. §2131.

Furthermore, the Examiner cites element 124 of Hartmann as disclosing an FDDL. Paper No. 12, page 4. Appellants respectfully traverse and assert that Hartmann instead discloses that element 124 corresponds to an object server interface translator. Column 5, line 63. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator corresponds to an FDDL. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator corresponds to an FDDL, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 36 and 62. M.P.E.P. §2131.

4. Claim 44 is not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "a second protocol means for providing a second service to the network system, wherein the

FDDL means communicates with the second protocol means" as recited in claim 44. The Examiner cites either element 110, 112 or 114 of Hartmann as disclosing the above-cited claim limitation. Paper No. 12, page 4. Appellants respectfully traverse and assert that Hartmann instead discloses that element 110 is a connection API translator as well as that element 112 is a Media API translator and that element 114 is an in-band signaling API translator. Column 5, lines 15-20. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that either a connection API translator, a Media API translator or an in-band signaling API translator is a protocol means for providing a service to a network system. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that either a connection API translator, a Media API translator or an in-band signaling API translator is a protocol means for providing a service to a network system, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claim 44. M.P.E.P. §2131.

Furthermore, the Examiner cites element 124 of Hartmann as disclosing an FDDL. Paper No. 12, page 4. Appellants respectfully traverse and assert that Hartmann instead discloses that element 124 corresponds to an object server interface translator. Column 5, line 63. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator corresponds to an FDDL. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator corresponds to an FDDL, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claim 44. M.P.E.P. §2131.

5. Claims 52 and 57 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "receiving additional information at a port controller in a second protocol from a first node machine; communicating the additional information from the port controller to a switch fabric; communicating the additional information from the switch fabric to a switch device driver within an operating system; communicating the additional information from the switch device driver to a Forwarding Database Distribution Library (FDDL); and communicating the additional information from the FDDL to a second protocol client" as recited in claim 52 and similarly in claim 57. The Examiner has not presented any evidence that Hartmann discloses any of these limitations. The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of anticipation in rejecting claims 52 and 57. M.P.E.P. §2131.

6. Claims 37, 45 and 63 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "wherein the FDDL system defines an FDDL API for communication with the software application, and the FDDL system defines a Switch Services API for communication with the switch device driver" as recited in claim 37 and similarly in claims 45 and 63. The Examiner cites column 3, line 1 – column 5, line 40, Figure 4 and elements 110, 112 and 114 of Hartmann as disclosing a software application comprising an API. Paper No. 12, page 5. The Examiner further states that the switch device driver inherently comprises an API by its coupling to elements 110, 112 and 114 of Hartmann. Paper No. 12, page 5. Furthermore, the Examiner cites element 124 of Hartmann as disclosing an FDDL. Paper No. 12, page 4. The Examiner further cites

either elements 110, 112 or 114 as disclosing a software application. Paper No. 12, page 4. Appellants respectfully traverse.

Hartmann instead teaches that element 124 corresponds to an object server interface translator. Column 5, line 63. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator corresponds to an FDDL. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator corresponds to an FDDL, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 37, 45 and 63. M.P.E.P. §2131.

Furthermore, the Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator defines an FDDL API for communication with a software application. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator defines an FDDL API for communication with a software application, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 37, 45 and 63. M.P.E.P. §2131.

Furthermore, the Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator defines a Switch Services API for communication with a switch device driver. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator defines a Switch

Services API for communication with a switch device driver, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 37, 45 and 63. M.P.E.P. §2131.

Furthermore, Hartmann instead discloses that element 110 is a connection API translator as well as that element 112 is a Media API translator and that element 114 is an in-band signaling API translator. Column 5, lines 15-27. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that either a connection API translator, a Media API translator or an in-band signaling API translator is a software application. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that either a connection API translator, a Media API translator or an in-band signaling API translator is a software application, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 37, 45 and 63. M.P.E.P. §2131.

Furthermore, the Examiner cites either element 116 or 126 of Hartmann as a switch device driver. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 116 is a call control transaction manager. Column 5, line 26. Hartmann further discloses that element 126 is a native switch OA&M transaction manager. Column 5, line 56. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a call control transaction manager or a native switch OA&M transaction manager is a switch device driver. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a call control transaction manager or a native switch OA&M transaction manager is a switch device

driver, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 37, 45 and 63. M.P.E.P. §2131.

7. Claims 38, 46 and 64 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "wherein the FDDL system defines an FDDL API for communication with the software application and the second software application, and the FDDL system defines a Switch Services API for communication with the switch device driver" as recited in claim 38 and similarly in claims 46 and 64. The Examiner cites column 3, line 1 – column 5, line 40, Figure 4 and elements 110, 112 and 114 of Hartmann as disclosing a software application comprising an API. Paper No. 12, page 5. The Examiner further states that the switch device driver inherently comprises an API by its coupling to elements 110, 112 and 114 of Hartmann. Paper No. 12, page 5. Furthermore, the Examiner cites element 124 of Hartmann as disclosing an FDDL. Paper No. 12, page 4. The Examiner further cites either elements 110, 112 or 114 as disclosing a software application. Paper No. 12, page 4. Appellants respectfully traverse.

Hartmann instead teaches that element 124 corresponds to an object server interface translator. Column 5, line 63. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator corresponds to an FDDL. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator corresponds to an FDDL, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 38, 46 and 64. M.P.E.P. §2131.

Furthermore, the Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator defines an FDDL API for communication with a first and a second software application. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator defines an FDDL API for communication with a first and a second software application, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 38, 46 and 64. M.P.E.P. §2131.

Furthermore, the Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator defines a Switch Services API for communication with a switch device driver. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator defines a Switch Services API for communication with a switch device driver, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 38, 46 and 64. M.P.E.P. §2131.

Furthermore, Hartmann instead discloses that element 110 is a connection API translator as well as that element 112 is a Media API translator and that element 114 is an in-band signaling API translator. Column 5, lines 15-27. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that either a connection API translator, a Media API translator or an in-band signaling API translator is a software application. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that either a connection API translator, a Media API translator or an in-band signaling API

translator is a software application, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 38, 46 and 64. M.P.E.P. §2131.

Furthermore, the Examiner cites either element 116 or 126 of Hartmann as a switch device driver. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 116 is a call control transaction manager. Column 5, line 26. Hartmann further discloses that element 126 is a native switch OA&M transaction manager. Column 5, line 56. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a call control transaction manager or a native switch OA&M transaction manager is a switch device driver. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a call control transaction manager or a native switch OA&M transaction manager is a switch device driver, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 38, 46 and 64. M.P.E.P. §2131.

8. Claims 53 and 58 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "all communicating between the switch device driver to the FDDL is done through a switch services API; and all communicating from the FDDL to the first protocol client and the second protocol client is done through an FDDL API " as recited in claim 53 and similarly in claim 58. The Examiner cites column 3, line 1 – column 5, line 40, Figure 4 and elements 110, 112 and 114 of Hartmann as disclosing a software application comprising an API. Paper No. 12, page 5. The Examiner further states

that the switch device driver inherently comprises an API by its coupling to elements 110, 112 and 114 of Hartmann. Paper No. 12, page 5. Furthermore, the Examiner cites element 124 of Hartmann as disclosing an FDDL. Paper No. 12, page 4. The Examiner further cites either elements 110, 112 or 114 as disclosing a software application. Paper No. 12, page 4. Appellants respectfully traverse.

Hartmann instead teaches that element 124 corresponds to an object server interface translator. Column 5, line 63. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator corresponds to an FDDL. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator corresponds to an FDDL, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 53 and 58. M.P.E.P. §2131.

Furthermore, the Examiner cites either element 116 or 126 of Hartmann as a switch device driver. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 116 is a call control transaction manager. Column 5, line 26. Hartmann further discloses that element 126 is a native switch OA&M transaction manager. Column 5, line 56. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a call control transaction manager or a native switch OA&M transaction manager is a switch device driver. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a call control transaction manager or a native switch OA&M transaction manager is a switch device driver, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner

has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 53 and 58. M.P.E.P. §2131.

Further, the Examiner had cited to column 3, line 1 – column 5, line 40 of Hartmann as teaching a switch services API. Paper No. 12, page 5. However, Appellants were unable to identify any language in the cited passage as teaching a switch services API. Appellants respectfully assert that there is no relevance of the cited passage to a switch services API where communication between a switch device driver to the FDDL is done through a switch services API. The Examiner must clearly explain the relevance of the cited passage to a switch services API where communication between a switch device driver to the FDDL is done through a switch services API. 37 C.F.R. §1.104(c)(2). Thus, Hartmann does not disclose all of the limitations of claims 53 and 58, and thus Hartmann does not anticipate claims 53 and 58. M.P.E.P. §2131.

Furthermore, the Examiner has not presented any evidence that Hartmann discloses "all communicating from the FDDL to the first protocol client and the second protocol client is done through an FDDL API." The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of anticipation in rejecting claims 53 and 58. M.P.E.P. §2131.

9. Claims 54 and 59 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "defining a switch services API for communication between the switch device driver; and defining an FDDL API for communication between the first protocol client and the FDDL" as recited in claim 54 and similarly in claim 59. The Examiner cites column 3, line 1 – column 5, line 40, Figure 4 and elements 110, 112 and 114 of Hartmann as

disclosing a software application comprising an API. Paper No. 12, page 5. The Examiner further states that the switch device driver inherently comprises an API by its coupling to elements 110, 112 and 114 of Hartmann. Paper No. 12, page 5. Furthermore, the Examiner cites element 124 of Hartmann as disclosing an FDDL. Paper No. 12, page 4. The Examiner further cites either elements 110, 112 or 114 of Hartmann as disclosing a software application. Paper No. 12, page 4. Appellants respectfully traverse.

Hartmann instead teaches that element 124 corresponds to an object server interface translator. Column 5, line 63. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that an object server interface translator corresponds to an FDDL. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that an object server interface translator corresponds to an FDDL, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 54 and 59. M.P.E.P. §2131.

Furthermore, the Examiner cites either element 116 or 126 of Hartmann as a switch device driver. Paper No. 12, page 3. Appellants respectfully traverse and assert that Hartmann instead discloses that element 116 is a call control transaction manager. Column 5, line 26. Hartmann further discloses that element 126 is a native switch OA&M transaction manager. Column 5, line 56. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a call control transaction manager or a native switch OA&M transaction manager is a switch device driver. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a call control transaction manager or a native switch OA&M transaction manager is a switch device driver, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169

F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 54 and 59. M.P.E.P. §2131.

Further, the Examiner had cited to column 3, line 1 – column 5, line 40 of Hartmann as teaching a switch services API. Paper No. 12, page 5. However, Appellants were unable to identify any language in the cited passage as teaching a switch services API. Appellants respectfully assert that there is no relevance of the cited passage to a switch services API where communication between a switch device driver to the FDDL is done through a switch services API. The Examiner must clearly explain the relevance of the cited passage to a switch services API where communication between a switch device driver to the FDDL is done through a switch services API. 37 C.F.R. §1.104(c)(2). Thus, Hartmann does not disclose all of the limitations of claims 54 and 59, and thus Hartmann does not anticipate claims 53 and 58. M.P.E.P. §2131.

Furthermore, the Examiner has not presented any evidence that Hartmann discloses "defining an FDDL API for communication between the first protocol client and the FDDL." The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of anticipation in rejecting claims 54 and 59. M.P.E.P. §2131.

B. Claims 39-42, 47-50, 55, 60 and 65-68 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Hartmann.

The Examiner has rejected claims 39-42, 47-50, 55, 60 and 65-68 under 35 U.S.C. §103(a) as being unpatentable over Hartmann. Paper No. 12, page 5. Appellants respectfully traverse for at least the reasons stated below and respectfully request the Examiner to reconsider and withdraw these rejections.

1. The Examiner has not presented any objective evidence for modifying Hartmann and therefore claims 39, 42, 47, 50, 55, 60, 65 and 68 are patentable over Hartmann.

A *prima facie* showing of obviousness requires the Examiner to establish, *inter alia*, that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention, and the Examiner must provide a motivation or suggestion to combine or modify the prior art reference to make the claimed inventions. M.P.E.P. §2142. The showings must be clear and particular. *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 50 U.S.P.Q.2d. 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

The Examiner's motivation for modifying Hartmann (1) to have an FDDL system that comprises a base FDDL system, a software application tower FDDL system and a second software application tower FDDL system, as recited in claim 39 and similarly in claim 65; (2) to have a base FDDL means, a protocol tower means and a second protocol tower means, as recited in claim 47; (3) to have an FDDL base within the FDDL and a first protocol FDDL tower within the FDDL, as recited in claim 55 and similarly in claim 60, is because "such configurations are well known in the art of network switching." Paper No. 12, page 6. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

Firstly, Appellants traverse the assertion that having a base FDDL system or a software application tower FDDL system is well known in the art. The Examiner has not provided any evidence that having a base FDDL system or a software application tower FDDL system is well known in the art but merely relies upon his own subjective opinion which is insufficient. The Examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his

conclusion. See *In re Soli*, 317 F.2d 941, 946, 137 U.S.P.Q. 797, 801 (C.C.P.A. 1963); M.P.E.P. §2144.03. Appellants respectfully assert that the Examiner must produce evidentiary authority to support his assertion. See *In re Zurko*, 258 F.3d 1379, 1386, 59 U.S.P.Q.2d 1693, 1697 (Fed. Cir. 2001).

Secondly, the Examiner must submit objective evidence for modifying Hartmann as indicated above in order to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). There is no suggestion in Hartmann of having a base FDDL system. Neither is there any suggestion in Hartmann of having a software application tower FDDL system. The Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 39, 42, 47, 50, 55, 60, 65 and 68. *Id.*

As a result of the foregoing, Appellants respectfully assert that the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 39, 42, 47, 50, 55, 60, 65 and 68. M.P.E.P. §2143.

2. Claims 39 and 65 are patentable over Hartmann.

Appellants respectfully assert that Hartmann does not teach or suggest "wherein the base FDDL system communicates with the switch device driver, the software application communicates with the software application tower FDDL system, the second software application communicates with the second software application tower FDDL system, and the base FDDL system communicates with the software application tower FDDL system and the second software application tower FDDL system" as recited in claim 39 and similarly in claim 65. The Examiner has not presented any evidence that Hartmann teaches any of these limitations. The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2

U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of obviousness in rejecting claims 39 and 65. M.P.E.P. §2143.

2. Claims 42 and 68 are patentable over Hartmann.

Appellants respectfully assert that Hartmann does not teach or suggest "wherein the base FDDL system communicates with the switch device driver, the software application communicates with the software application tower FDDL system, the second software application communicates with the second software application tower FDDL system, and the base FDDL system communicates with the software application tower FDDL system and the second software application tower FDDL system" as recited in claim 42 and similarly in claim 68. The Examiner has not presented any evidence that Hartmann teaches any of these limitations. The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of obviousness in rejecting claims 42 and 68. M.P.E.P. §2143.

3. Claim 47 is patentable over Hartmann.

Appellants respectfully assert that Hartmann does not teach or suggest "a base FDDL means for communicating with the switch device driver means; a protocol tower FDDL means for communicating with the protocol means and the base FDDL means; and a second protocol tower FDDL means for communicating with a second protocol means and the base FDDL means" as recited in claim 47. The Examiner has not presented any evidence that Hartmann teaches any of these limitations. The Examiner must present a reference that discloses each and every element as set forth

in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of obviousness in rejecting claim 47. M.P.E.P. §2143.

4. Claim 50 is patentable over Hartmann.

Appellants respectfully assert that Hartmann does not teach or suggest that "a base FDDL means for communicating with the switch device driver means; a protocol tower FDDL means for communicating with the protocol means and the base FDDL means; and a second protocol tower FDDL means for communicating with the second protocol means and the base FDDL means" as recited in claim 50. The Examiner has not presented any evidence that Hartmann teaches any of these limitations. The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of obviousness in rejecting claim 50. M.P.E.P. §2143.

5. Claims 55 and 60 is patentable over Hartmann.

Appellants respectfully assert that Hartmann does not teach or suggest "receiving the information from the switch device driver at an FDDL base within the FDDL; passing the information from the FDDL base to a first protocol FDDL tower within the FDDL; and sending the information from the first protocol FDDL tower to the first protocol client" as recited in claim 55 and similarly in claim 60. The Examiner has not presented any evidence that Hartmann teaches any of these limitations. The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814

F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of obviousness in rejecting claims 55 and 60. M.P.E.P. §2143.

6. Claims 40-41, 48-49 and 66-67 are not dependent from claims 39, 47 and 65 and therefore should not be rejected under 35 U.S.C. §103(a) as being unpatentable over Hartmann.

The Examiner has rejected claims 40-41, 48-49 and 66-67 under 35 U.S.C. §103(a) as being unpatentable over Hartmann. Paper No. 12, page 6. However, claims 40-41, 48-49 and 66-67 are not dependent upon claims 39, 47 and 65 which were rejected under 35 U.S.C. §103(a) as being unpatentable over Hartmann since Hartmann does not specifically disclose an FDDL system that comprises a base FDDL system and a software application tower FDDL system. Paper No. 12, page 5. Instead, the Examiner is asserting that Hartmann discloses each and every claim limitation of claims 40-41, 48-49 and 66-67 as well as the claims upon which they depend, claims 35, 43 and 61, respectively. Accordingly, the Examiner should be rejecting claims 40-41, 48-49 and 66-67 under 35 U.S.C. §102(e) as being anticipated by Hartmann and not rejecting claims 40-41, 48-49 and 66-67 under 35 U.S.C. §103(a) as being unpatentable over Hartmann. Appellants will be addressing the rejections of claims 40-41, 48-49 and 66-67 as if they were rejected under 35 U.S.C. §102(e) as being anticipated by Hartmann.

7. Claims 40-41, 48-49 and 66-67 are not anticipated by Hartmann.

Appellants respectfully assert that Hartmann does not disclose "an independent software application operable to execute on the CPU" as recited in claim 40 and similarly in claim 66. The Examiner cites either element 110, 112 or 114 of Hartmann as disclosing the above-cited claim limitation. Paper No. 12, page 6. Appellants respectfully traverse and assert that Hartmann instead discloses that element 110 is a connection API translator as well as that element 112 is a Media

API translator and that element 114 is an in-band signaling API translator. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that either a connection API translator, a Media API translator or an in-band signaling API translator is an independent software application. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that either a connection API translator, a Media API translator or an in-band signaling API translator is an independent software application, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 40 and 66. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "an independent software application shim operable to execute on the CPU" as recited in claim 40 and similarly in claim 66. The Examiner cites element 120 of Hartmann as disclosing the above-cited claim limitation. Paper No. 12, page 6. Appellants respectfully traverse and assert that Hartmann instead discloses that element 120 is a logical device management that provides the logic necessary to manage per-device information. Column 5, lines 33-34. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a logical device management that provides the logic necessary to manage per-device information discloses an independent software application shim. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a logical device management that provides the logic necessary to manage per-device information discloses an independent software application shim, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 40 and 66. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "wherein the independent software application communicates with the independent software application shim and the independent software application shim communicates with the switch device driver" as recited in claim 40 and similarly in claim 66. The Examiner cites either element 110, 112 or 114 of Hartmann as disclosing an independent software application; element 120 of Hartmann as disclosing a software application shim; and element 116 of Hartmann as disclosing a switch device driver. Paper No. 12, page 6. Appellants respectfully traverse.

Hartmann instead discloses that element 110 is a connection API translator as well as that element 112 is a Media API translator and that element 114 is an in-band signaling API translator. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that either a connection API translator, a Media API translator or an in-band signaling API translator is an independent software application. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that either a connection API translator, a Media API translator or an in-band signaling API translator is an independent software application, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 40 and 66. M.P.E.P. §2131.

Furthermore, Hartmann instead discloses that element 120 is a logical device management that provides the logic necessary to manage per-device information. Column 5, lines 33-34. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a logical device management that provides the logic necessary to manage per-device information discloses an independent software application shim. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence

that a logical device management that provides the logic necessary to manage per-device information discloses an independent software application shim, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 40 and 66. M.P.E.P. §2131.

Furthermore, Hartmann instead discloses that element 116 is a call control transaction manager. Column 5, line 26. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a call control transaction manager is a switch device driver. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that a call control transaction manager is a switch device driver, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claims 40 and 66. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a second software application operable to execute on the CPU, wherein the FDDL system defines an FDDL API for communication with the software application and the second software application, and the FDDL system defines a Switch Services API for communication with the switch device driver" as recited in claim 41 and similarly in claim 67. The Examiner has not presented any evidence that Hartmann discloses any of these limitations. The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of anticipation in rejecting claims 41 and 67. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "an independent protocol means for providing an independent service to the network system; and an independent protocol shim for communicating with the independent protocol means and the switch device driver means" as recited in claim 48. The Examiner has not presented any evidence that Hartmann discloses any of these limitations. The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of anticipation in rejecting claim 48. M.P.E.P. §2131.

Appellants further assert that Hartmann does not disclose "a second protocol means for providing a second service to the network system, wherein the FDDL means communicates with the second protocol means" as recited in claim 49. The Examiner has not presented any evidence that Hartmann discloses any of these limitations. The Examiner must present a reference that discloses each and every element as set forth in the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); M.P.E.P. §2131. Since the Examiner has not provided any evidence that Hartmann discloses any of these limitations, the Examiner has not provided a *prima facie* case of anticipation in rejecting claim 49. M.P.E.P. §2131.

VIII. CONCLUSION

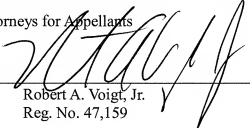
For the reasons noted above, the rejections of claims 35-68 are in error. Appellants respectfully request reversal of the rejections and allowance of claims 35-68.

Respectfully submitted,

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CLAIMS APPENDIX

35. A network switch comprising:
- a CPU;
 - a memory system having circuitry operable to attach to the CPU;
 - a switch fabric system having circuitry operable to attach to the CPU;
 - a port controller having circuitry operable to attach to the switch fabric system;
 - a software application operable to execute on the CPU;
 - a Forwarding Database Distribution Library (FDDL) system operable to execute on the CPU; and
 - a switch device driver operable to execute on the CPU,
- wherein the software application is operable to communicate with the FDDL system, the FDDL system is operable to communicate with the switch device driver, and the switch device driver is operable to communicate with the switch fabric.
36. The network switch of claim 35 further comprising a second software application operable to execute on the CPU, wherein the second software application communicates with the FDDL system.
37. The network switch of claim 35 wherein the FDDL system defines an FDDL API for communication with the software application, and the FDDL system defines a Switch Services API for communication with the switch device driver.
38. The network switch of claim 36 wherein the FDDL system defines an FDDL API for communication with the software application and the second software application, and the FDDL system defines a Switch Services API for communication with the switch device driver.
39. The network switch of claim 36 wherein the FDDL system comprises:

- a base FDDL system;
- a software application tower FDDL system; and
- a second software application tower FDDL system

wherein the base FDDL system communicates with the switch device driver, the software application communicates with the software application tower FDDL system, the second software application communicates with the second software application tower FDDL system, and the base FDDL system communicates with the software application tower FDDL system and the second software application tower FDDL system.

40. The network switch of claim 35 further comprising:
an independent software application operable to execute on the CPU; and
an independent software application shim operable to execute on the CPU,
wherein the independent software application communicates with the independent software application shim and the independent software application shim communicates with the switch device driver.

41. The network switch of claim 40 further comprising a second software application operable to execute on the CPU, wherein the FDDL system defines an FDDL API for communication with the software application and the second software application, and the FDDL system defines a Switch Services API for communication with the switch device driver.

42. The network switch of claim 40 wherein the FDDL system comprises:
a base FDDL system;
a software application tower FDDL system; and
a second software application tower FDDL system
wherein the base FDDL system communicates with the switch device driver, the software application communicates with the software application tower FDDL

system, the second software application communicates with the second software application tower FDDL system, and the base FDDL system communicates with the software application tower FDDL system and the second software application tower FDDL system.

43. A network switch comprising:
- a CPU;
 - a memory system having circuitry operable to attach to the CPU;
 - a switch fabric system having circuitry operable to attach to the CPU;
 - a port controller having circuitry operable to attach to the switch fabric system;
 - a protocol means for providing a service to a network system;
 - a Forwarding Database Distribution Library (FDDL) means for communicating with the protocol means; and
 - a switch device driver means for communicating with the FDDL means and the port controller.
44. The network switch of claim 43 further comprising a second protocol means for providing a second service to the network system, wherein the FDDL means communicates with the second protocol means.
45. The network switch of claim 43 wherein the FDDL means defines an FDDL API for communication with the software application, and the FDDL means defines a Switch Services API for communication with the switch device driver.
46. The network switch of claim 44 wherein the FDDL means defines an FDDL API for communication with the protocol means and the second protocol means, and the FDDL system defines a Switch Services API for communication with the switch device driver means.

47. The network switch of claim 44 wherein the FDDL means comprises:
a base FDDL means for communicating with the switch device driver means;
a protocol tower FDDL means for communicating with the protocol means
and the base FDDL means; and
a second protocol tower FDDL means for communicating with a second
protocol means and the base FDDL means.
48. The network switch of claim 43 further comprising:
an independent protocol means for providing an independent service to the
network system; and
an independent protocol shim for communicating with the independent
protocol means and the switch device driver means.
49. The network switch of claim 48 further comprising a second protocol means
for providing a second service to the network system, wherein the FDDL means
communicates with the second protocol means.
50. The network switch of claim 48 wherein the FDDL means comprises:
a base FDDL means for communicating with the switch device driver means;
a protocol tower FDDL means for communicating with the protocol means
and the base FDDL means; and
a second protocol tower FDDL means for communicating with the second
protocol means and the base FDDL means.
51. A method of providing communications over a network system utilizing a first
protocol and a second protocol, the method comprising the steps of:
receiving information at a port controller in a first protocol from a first node
machine;

- communicating the information from the port controller to a switch fabric;
- communicating the information from the switch fabric to a switch device driver within an operating system;
- communicating the information from the switch device driver to a Forwarding Database Distribution Library (FDDL); and
- communicating the information from the FDDL to a first protocol client.

52. The method of claim 51 further comprising the steps of:

- receiving additional information at a port controller in a second protocol from a first node machine;
- communicating the additional information from the port controller to a switch fabric;
- communicating the additional information from the switch fabric to a switch device driver within an operating system;
- communicating the additional information from the switch device driver to a Forwarding Database Distribution Library (FDDL); and
- communicating the additional information from the FDDL to a second protocol client.

53. The method of claim 52 wherein

- all communicating between the switch device driver to the FDDL is done through a switch services API; and
- all communicating from the FDDL to the first protocol client and the second protocol client is done through an FDDL API.

54. The method of claim 52 further comprising the steps of:

- defining a switch services API for communication between the switch device driver; and

defining an FDDL API for communication between the first protocol client and the FDDL.

55. The method of claim 52 further comprising the steps:
- receiving the information from the switch device driver at an FDDL base within the FDDL;
 - passing the information from the FDDL base to a first protocol FDDL tower within the FDDL; and
 - sending the information from the first protocol FDDL tower to the first protocol client.
56. A computer-readable medium having stored thereon computer-executable instructions for performing the steps comprising:
- receiving information at a port controller in a first protocol from a first node machine;
 - communicating the information from the port controller to a switch fabric;
 - communicating the information from the switch fabric to a switch device driver within an operating system;
 - communicating the information from the switch device driver to a Forwarding Database Distribution Library (FDDL); and
 - communicating the information from the FDDL to a first protocol client.
57. The computer-readable medium of claim 56 having further stored thereon computer-executable instructions for performing the steps comprising:
- receiving additional information at a port controller in a second protocol from a first node machine;
 - communicating the additional information from the port controller to a switch fabric;

communicating the additional information from the switch fabric to a switch device driver within an operating system;

communicating the additional information from the switch device driver to a Forwarding Database Distribution Library (FDDL); and

communicating the additional information from the FDDL to a second protocol client.

58. The computer-readable medium of claim 57 wherein

all communicating between the switch device driver to the FDDL is done through a switch services API; and

all communicating from the FDDL to the first protocol client and the second protocol client is done through an FDDL API.

59. The computer-readable medium of claim 57 having further stored thereon computer-executable instructions for performing the steps comprising:

defining a switch services API for communication between the switch device driver; and

defining an FDDL API for communication between the first protocol client and the FDDL.

60. The computer-readable medium of claim 57 having further stored thereon computer-executable instructions for performing the steps comprising:

receiving the information from the switch device driver at an FDDL base within the FDDL;

passing the information from the FDDL base to a first protocol FDDL tower within the FDDL; and

sending the information from the first protocol FDDL tower to the first protocol client.

61. A network system comprising:

a network switch comprising a CPU, a memory system having circuitry operable to attach to the CPU, a switch fabric system having circuitry operable to attach to the CPU a port controller having circuitry operable to attach to the switch fabric system, a software application operable to execute on the CPU, a Forwarding Database Distribution Library (FDDL) system operable to execute on the CPU, and a switch device driver operable to execute on the CPU, wherein the software application is operable to communicate with the FDDL system, the FDDL system is operable to communicate with the switch device driver, and the switch device driver is operable to communicate with the switch fabric;

a backbone; and

a workstation,

wherein the workstation is logically connected to the backbone, and

wherein the backbone is logically connected to the port controller of the network switch.

62. The network system of claim 61 further comprising a second software application operable to execute on the CPU, wherein the second software application communicates with the FDDL system.

63. The network system of claim 61 wherein the FDDL system defines an FDDL API for communication with the software application, and the FDDL system defines a Switch Services API for communication with the switch device driver.

64. The network system of claim 62 wherein the FDDL system defines an FDDL API for communication with the software application and the second software application, and the FDDL system defines a Switch Services API for communication with the switch device driver.

65. The network system of claim 62 wherein the FDDL system comprises:
a base FDDL system;
a software application tower FDDL system; and
a second software application tower FDDL system
wherein the base FDDL system communicates with the switch device driver, the software application communicates with the software application tower FDDL system, the second software application communicates with the second software application tower FDDL system, and the base FDDL system communicates with the software application tower FDDL system and the second software application tower FDDL system.
66. The network system of claim 61 further comprising:
an independent software application operable to execute on the CPU; and
an independent software application shim operable to execute on the CPU,
wherein the independent software application communicates with the independent software application shim and the independent software application shim communicates with the switch device driver.
67. The network system of claim 66 further comprising a second software application operable to execute on the CPU, wherein the FDDL system defines an FDDL API for communication with the software application and the second software application, and the FDDL system defines a Switch Services API for communication with the switch device driver.
68. The network system of claim 66 wherein the FDDL system comprises:
a base FDDL system;
a software application tower FDDL system; and
a second software application tower FDDL system

wherein the base FDDL system communicates with the switch device driver, the software application communicates with the software application tower FDDL system, the second software application communicates with the second software application tower FDDL system, and the base FDDL system communicates with the software application tower FDDL system and the second software application tower FDDL system.

EVIDENCE APPENDIX

No evidence was submitted pursuant to §§1.130, 1.131, or 1.132 of 37 C.F.R. or of any other evidence entered by the Examiner and relied upon by Appellants in the Appeal.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings to the current proceeding.

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